Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

NO. 78-1153

JOHN ANGUS,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

REPLY BRIEF TO BRIEF FILED FOR THE UNITED STATES IN OPPOSITION

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The Solicitor General, in opposition to the Petition for Writ of Certiorari filed on behalf of John Angus, has attempted to simplify the issues presented by said Petition by reducing the two questions presented to one. Whereupon the Solicitor General's brief goes on to argue against the proposition suggested by their brief irrespective of the question presented, and their conclusions predicated thereupon, we suggest, are erroneous 2

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ARGUMENT

THE SOLICITOR GENERAL, IN OPPOSITION TO THE PETITION FOR CERTIORARI FILED ON BEHALF OF JOHN ANGUS, HAS ATTEMPTED TO SIMPLIFY THE ISSUES PRESENTED BY SAID PETITION BY REDUCING THE TWO QUESTIONS PRESENTED TO ONE. WHEREUPON THE SOLICITOR GENERAL'S BRIEF GOES ON TO ARGUE AGAINST THE PROPOSITION SUGGESTED BY THEIR BRIEF IRRESPECTIVE OF THE QUESTION PRESENTED, AND THEIR CONCLUSIONS PREDICATED THEREUPON, WE SUGGEST, ARE ERRONEOUS.

The questions presented by the original Petition for Certiorari are two in nature.

1. Does the denial by the trial judge of an Evidentiary Hearing on Petitioner's demand for specific performance under the *Santobello* [404 U.S. 257] rationale constitute a deprivation of Petitioner's rights to due process under the *Fifth Amendment* to the *Constitution of the United States* as well as also failing to promote the policy of this Court in the sound administration of justice?

2. Is Petitioner entitled to specific performance of his plea bargain contract on due process grounds where he was induced to enter a plea of guilty on the basis of receiving probation, should he act as an agent for the government in various controlled substances deals or otherwise furnish evidence of ongoing criminal activity.

The government's Brief in Opposition at footnote No. 6 on page 6 suggests that the Court heard testimony at a pretrial suppression hearing on September 6, 1976 from the five (5) individuals who were present at the plea negotiations, considered the testimony of each witness, and concluded no agreement had been reached.

It is uncontroverted, and the government does not even allude to the fact that on June 16, 1976 counsel for the Petitioner requested the court to give him a hearing on the issue of specific performance and whether or not the alleged plea bargain had been reached. The judge on that date refused to grant a hearing to determine the government had breached the plea bargain agreement. Subsequent to that time, at a hearing on a collateral matter in September, the court made an observation which obviously was in the nature of dicta. It did not address itself to the hearing which the defendant had requested in June to be convened at that time.

It is further undisputed that a great deal of confusion existed with respect to the purported plea bargain which justified a full evidentiary hearing addressed to the issue of the plea bargain, not through a motion to suppress. The government's statement contained in its Brief in Opposition acknowledges the following factors that would suggest that some kind of plea bargaining understanding had ripened in the mind of the petitioner.

1. Thomas Howard, who was petitioner's counsel at the time of negotiations, testified he could not recall the details of his conversation but it was understood that the government had agreed if petitioner provided evidence of a number of serious narcotics violations, that petitioner would be placed on probation.

2. Petitioner testified that Mr. Howard, his attorney, told him that he would receive probation if he made three deals for the government.

3. Agent Seward, who was present at the negotiations, later stated that "there was a deal in my mind that if petitioner plead guilty and performed, that the government would make a recommendation for probation."

4. F.B.I. agent Bolton testified that he overheard defense counsel tell petitioner that if petitioner were able to give federal officials evidence of "Class A" violations, the sentence might be reduced by five years in each case.

Taking the facts set forth by the brief by the government in opposition, it is clear that some kind of understanding had apparently been reached which, in a amorphous fashion, suggested that defendant, petitioner herein, should he furnish three "Class A" deals, would receive probation, or at least a recommendation of probation, from the government. The failure to grant a hearing under the doctrine of *Santobello, supra*, under these circumstances, clearly establishes the deprivation of petitioner's rights to due process in connection with the supposed plea bargain understanding.

CONCLUSION

The trial court refused to give John Angus, petitioner herein, an Evidentiary Hearing on the issue of a plea bargain and specific performance of same. This was error of constitutional dimension. The trial court should have granted John Angus the option after hearing, of vacating the plea or granting specific performance. Having failed to grant a hearing and the aforesaid option, the within Petition for Writ of Certiorari should be granted.

Petitioner, John Angus respectfully prays that this Court vacate and remand with directions to the trial Court to hold an evidentiary hearing. And if it should find that John Angus entered his plea on the inducement that he was to be given probation, then the same should be imposed.

Respectfully submitted,

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